

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
MARIANNA PRZHEBELSKAYA,
VLADIMIR PRZHEBELSKIY, AND
YEVGENIYA PRZHEBELSKAYA,

Plaintiffs,

-against-

ALBERTO GONZALES, Attorney General of the
United States, EDUARDO AGUIRRE, JR.,
Commissioner of the Bureau of Citizenship
and Immigration Services, and EDWARD
McELROY, District Director of the Bureau
of Citizenship and Immigration Services,

Defendants.

-----X

PLAINTIFF'S MOTION TO RECALENDAR APPLICATION FOR ATTORNEY'S FEES

INTRODUCTION

Plaintiff, through undersigned counsel, respectfully moves to re-calendar her application for attorney's fees pursuant to §204(a) of the Equal Access to Justice Act, 28 U.S.C. 2412. We are bringing this motion after stipulation with the government to pay EAJA (Equal Access to Justice Act) fees and after their failure to comply with the stipulation.

This action began after the defendants failed to adjudicate applications for legal permanent residence that the plaintiffs were entitled to by stipulation and order entered on January 26th, 2005 where the parties agreed that plaintiffs be awarded \$8,474.00 in attorney's fees.

FACTS

The plaintiffs applied for legal permanent residence through a visa lottery. After the defendants refused to adjudicate these applications, new counsel re-filed them. The defendants again refused to adjudicate these applications. There was a deadline of September 30th, 2003 to complete all applications in this program.

On July 2003, plaintiffs Marianna Przhebel'skaya, her husband, Vladimir Przhebel'skiy, and her daughter, Yevgeniya Przhebel'skaya filed and order to show cause in the nature for Mandamus in order to compel the Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services, to complete the adjudications. On their own and after this matter was filed with the court, the defendants reopened these cases. On September 24th, 2003 the defendants had still not completed these matters and this court ordered the defendants to adjudicate plaintiffs applications immediately and no later than September 30th, 2003. One plaintiff, Marianna Przhebel'skaya, was issued legal permanent resident status on the afternoon of the last day of the program while her husband, Vladimir Przhebel'skiy, and daughter, Yevgeniya Przhebel'skaya, were not, with the explanation that no visas were available. Those visas would have been available had the applications been adjudicated promptly after the court order.

A second application for a motion to contempt and to compel was later filed after September 30th, 2004. That application was granted in part by this court. The part to compel was granted and the defendants issued legal permanent residence pursuant to that order. The part for contempt was withheld pending the government's actions in completing the visa process. The plaintiffs were successful.

Plaintiffs initial request for counsel fees amounted to \$24,672.00. After the government promised to quickly expedite this matter and conferred a guarantee of no uncertainty, the parties agreed on a sum that was approximately one-third the original request, \$8,474.00. On January 26th, 2005 it was ordered that the government pay \$8,474.00 to the plaintiffs for attorneys fees and that this amount would amount to full satisfaction of any claim for such fees. Over six months have elapsed since the stipulation and order and, to date, plaintiffs have not received any portion of the settlement.

Plaintiffs have been forced to incur more cost in litigating this matter. Furthermore, the \$8,474.00 sum was agreed upon with the express understanding that the government would handle this matter in an expedited manner. Since the government has failed to do so, and six months have elapsed since the original stipulation and order, the plaintiff requests the original amount, \$24,672.00 as well as additional fees for the adjudication of this current matter. A copy of the original fee schedule is attached.

RELIEF REQUESTED

Counsel asks the Court to exercise its discretion, given the facts in this particular case, and reopen this matter. For the foregoing reasons, Plaintiff respectfully requests that the Court re-calendar this case to allow for her to obtain counsel fees that are long overdue.

RESPECTFULLY SUBMITTED this 8th day of August, 2005.

Harry DeMell
Attorney at Law
225 Broadway
New York, NY 10007
(212) 732-2767